IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2007

CORAM:

THE HON'BLE MR. JUSTICE M.E.N.PATRUDU

W.P.No.3837 of 1999

N.Chinnappan ... Petitioner

versus

1. State of Tamil Nadu rep. by
   Secretary to Government
   Industries Department
   Fort St. George, Chennai - 600 009.

2. The Chairperson and Managing Director
   Tamil Nadu Sugar Corporation
   474, Anna Salai, Nandanam Chennai - 600 035.

3. A.Arulappan ... Respondents

Petition filed under article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents 1 & 2 herein to consider the highest experience aspect coupled with other requisite qualifications possessed by the petitioner as per the Notification for selection of Chief Sugar Chemist, appropriately in preference to that of the 3rd respondent and appoint the petitioner as such in the second respondent Corporation.

For Petitioner : Shri.S.T.S.Murthy
For Respondents : Smt.C.K.Vishnupriya,G.A- for R1
Shri.M.R.Raghavan - for R2
Shri.G.Rajagopalan,S.C.- for R3

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ORDER

The petitioner joined as Apprentice Lab. Chemist in Salem Co-operative Sugar Mills on 20.01.1971 and transferred to Ambur co-operative Sugar Mills Limited and completed the Apprenticeship by 06.01.1972 and thereafter he was appointed as Lab Chemist on 07.01.1972 in Dharmapuri Sugar Mills and worked till 17.10.1974. In the meantime, he secured Sugar Technology Course Certificate from the National Sugar Institute, Kanpur and then served in various capacities in various Sugar Mills and it is stated as follows:

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Post Held	Period/Duration	Y	M	Name of the Institution
Manufacturing Chemist	18.10.74/ 30.11.76	2	2	Dharmapuri Sugars
- do -	19.01.77/ 24.09.77	0	9	Arignar Anna Sugar Mill
- do -	25.09.77/ 16.04.80	2	7	Perambalur Sugars
Deputy Chief Chemist	17.04.80/ 30.11.85	5	7	Perambalur Sugars
Chief Chemist	01.12.85/ 12.05.90	4	6	N.P.K.R.R.Co-op. Sugar Mill
Chief Chemist	12.05.90/ 02.06.94	4	2	M.R.K. Co-op. Sugar Mill
Chief Chemist	03.06.94/ 26.02.98	3	8	Vellore Co-op.Sugar Mill

2. The case of the petitioner is that still he is continuing as Chief Chemist in Vellore Co-operative Sugar Mills. In February 1998 an advertisement was issued by the Chairperson and Managing Director of Tamil Nadu Sugar Corporation Limited for the appointment of Chief Sugar Chemist in the Corporation. As the petitioner possessed all the requisite qualifications and the experience stipulated in the advertisement, he has applied for the post of Chief Sugar Chemist in the second respondent Corporation and the results were announced after the interview on 17.07.1998 and the Assistant Manager (Administration) read out the marks obtained by the candidates as follows:

	Written	Oral	Total
1. A.Arulappan	17.0	48.25	65.25
2. Chinnappan	14.5	44.05	59.00
3. Anand	16.0	33.75	49.75
4. Venkatesan	16.0	26.00	42.00
5. Thirumurthy	13.5	24.75	38.25

The petitioner stood number two in the merit and the third respondent secured more marks in the written examination as well as in the oral.

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3. The contention of the petitioner is that the third respondent has not acquired the stipulated experience as stated in the advertisement for the appointment. The Selection Committee has no power to relax the required experience period stipulated in the advertisement and allowed the third respondent herein to participate in the interview and that his subsequent selection is not proper. It is stated that the required experience as Chief Chemist of a running Sugar Factory of minimum Crushing Capacity of 1250 T.C.D. and also 15 years experience is required and the third respondent is lacking the said experience and he should not have been allowed to attend the interview.

4. The contention of the petitioner is that he along with others alone possess the required qualification to attend for the selection. While so, the third respondent is not qualified at all. However, the third respondent has been permitted to attend the interview and also selected. The petitioner is questioning the same.

5. The second respondent filed a counter denying all the allegations.

(i) It is stated that in February 1998, the second respondent released an advertisement calling for candidates to fill up the posts of Chief Sugar Chemist in the second respondent organization.

(ii) It was stipulated that the candidate should possess at least 15 years of experience out of which 6 years in the cadre of Chief Chemist in a running Sugar Mill with 1250 TCD capacity.

(iii) It is stated that for the purpose of selection a recruitment committee was also constituted consisting of five members, they being Chairman-cum-Managing Director, Joint Commissioner of Sugar, General Manager, one expert in Sugar Technology and one Academician with expertise in Chemical Engineering.

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(iv) It is also stated that applications were received and the third respondent is an eligible candidate. Therefore, he was also called for interview and the recruitment committee after conducting written and oral test awarded marks to the candidates. The second respondent accepted the marks awarded by the committee and issued orders.

(v) The second respondent in paragraph 4 has furnished the service details of the third respondent and they are as follows:

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S.No.	Name of the candidate	Oral out of 70	Marks obtained written out of 30	Total in %
1.	A. Anand	33.75	16.0	49.75
2.	A.Arulappan	48.25	17.0	65.75
3.	N.Chinnappan	44.50	14.5	59.00
4.	A.Venkatesan	26.75	16.0	42.75
5.	A.G.Thirumurthy	24.75	13.5	38.25

(vi) According to the second respondent, the third respondent possess more than the minimum experience prescribed by the second respondent and the service of the third respondent is taken as equivalent to the Chief Chemist post and therefore they have permitted the third respondent to appear for the interview. It appears that the appointment order of third respondent was stopped and the individual was requested to submit clear proof for his service as chief chemist for 6 years. Accordingly, the third respondent produced his service certificate and they are as follows:

S.No.	Designation	Period	Year	Month	Days
1.	C.C.Manager Production	19.8.91 31.12.93	2	4	13
2.	C.M. Badra Project/ incharge of Production at Nayagarh Unit	1.1.94 31.7.96	2	7	-
3.	G.M.Nayagarh Unit	1.8.96	-	9	04
4.	Asst. G.M.(Production) Polour Unit	5.5.97 2.3.98	-	9	29
	Total Experience		6	6	16

(vii) In paragraph 5 of the counter it is stated that one of the applicant filed Writ Petition No.10706 of 1998 with a prayer to cancel the appointment of third respondent. The second respondent did not furnish any details about the outcome of the above writ petition. It is not known whether the said writ petition is dismissed or allowed. It appears an interim order is granted on 29.07.1998 restraining the second respondent from appointing the third respondent.

(viii) It is further stated in the counter that as per service particulars furnished by the third respondent, he has 5 years and 9 1/2 months experience only as Chief Chemist/ General Manager on the date of application and as per the prescribed qualification and experience, the candidate should have 15 years of experience out of which atleast 6 years as Chief Chemist of a running Sugar Factory of a minimum capacity of 1250 TCD. But the third respondent produced certificate showing that he has 5 years and 9 1/2 months as Chief Chemist in 1250 TCD Sugar Mill.

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(ix) The contention of the second respondent is that papers are placed before the Board along with necessary proposal for resolution and the Board resolved and directed to get it confirmed from Nayagarah Factory where the third respondent worked and whether he worked in production or processing and on the basis of the same, a clarifications was sought from M/s. Dharani Sugars and Chemicals vide Lr. No.928/97/E2 dated 31.12.1998 confirmed that the third respondent while working as General Manager at Nayagarh was simultaneously attending to Sugar process and production work also. Hence the same as considered and it is stated that necessary orders of appointment was issued to the third respondent through proceedings No.928/97/E2, dated 17.2.1999 and the third respondent also joined duty on 19.03.1999.

(x) The second respondent did not clarify whether the interim orders given by this court in W.P.No.10706 of 1998 is vacated or still in force by the date of issuance of appointment of the order in favour of the third respondent.

(xi) All other details such as how the marks are allotted, etc., have been furnished in the remaining paragraph of the counter.

6. The third respondent also filed counter wherein it is stated in the counter the he has secured the highest mark in written and oral and he is the most meritorious candidate. He has highlighted his qualification etc., and his service particulars. The third respondent did not clarify whether he has 6 years experience of the Chief Chemist in a Sugar Factor having 1250 TCD capacity ro 15 years of experience as Chief Chemist.

7. Heard both sides.

8. The short point ;for determination is whether the third respondent is eligible to be called for selection.

9. Point:

(i) To answer the above, the crucial document is the advertisement. The petitioner as well as the second respondent have produced the notification issued by the second respondent for the post of Chief Sugar Chemist and it reads as follows:

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Qualifications : Degree in B.Sc.(Chemistry) with ADSI/ANSI

(or)

B.E. (Chemical)B.Tech.(Chemical) with ADSI/ANSI.

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Experience : 15 years of which atleast 6 years as Chief Chemist of a running Sugar Factory of minimum crushing capacity of 1250 TCD

Age limit : 50 years. Relaxable by three years in deserving case.

Candidates possessing the requisite qualifications and experience as above may apply to Chairperson and Managing Director, Tamil Nadu Sugar Corporation Limited.

(ii) Plain reading of the same discloses that in the column of experience that the candidate should possess 15 years as Chief Chemist and out of which atleast 6 years as Chief Chemist of a running sugar Factory of minimum crushing capacity of 1250 TCD.

(iii)Further the notification clarifies that the candidates possessing the requisite qualification and experience as above to apply to Chairperson cum Managing Director.

(iv) Therefore, the notification is very clear that the candidate should have 15 years experience as Chief Chemist and out of which alteast 6 years as Chief Chemist of a running Sugar Factory of minimum crushing capacity of 1250 TCD and such candidates alone have to apply.

10. In the counter of second respondent itself it is clarified that the third respondent has neither 15 years experience as Chief Chemist or 6 years as Chief Chemist of a running Sugar Factory of minimum crushing capacity of 1250 TCD.

11. Plain perusal of the experience furnished by the third respondent through their respective counter discloses that the third respondent joined as Lab Assistant on 09.03.1977 and worked till 16.5.1983 and thereafter as manufacturing Chemist from 20.05.1983 to 15.09.1988 and thereafter as Factory Superintendent from 16.09.1988 to 14.8.1991 and as Chief Chemist from 19.08.1991 to 31.12.1993 and as General Manager and additional charge as Chief Chemist from 01.01.1994 to 04.08.1996 and General Manager from 5.8.1996 to 4.5.1997 and as Assistant General Manager(P) from 5.5.1997 to 17.7.1998.

12. Out of which Sugar Mill which has 1250 TCD is Dharani Sugars and Chemicals Nayagarh, Orissa and the other mills are only 900 TCD.

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13. Therefore, it is very clear that the third respondent never worked as Chief Chemist either for 15 years as Chief Chemist of a running sugar Factory of minimum crushing capacity of 1250 TCD for 6 years or more. The same fact has been admitted by the second respondent in page 6 of his counter.

14. When the third respondent is not eligible to attend for the selection, he was permitted to attend the interview which is questionable. When the petitioner and others who are eligible, who are having requisite experience, the second respondents should have considered them.

15. Therefore, the mala fide intention of the second respondent and the bias of the recruitment committee and arbitrariness in the action of the second respondent and the selection committee are born-out through the records.

16. The respondents have also produced the original file and the Court has perused the same and at page 183, it is clearly stated that the Board has passed the following resolutions:

"Resolved to cancel the selection of Thiru A.Arulappan for the post of CSC as resolved by the Board of Directors in their circular resolution dated 21.7.1978, since he was possessing only 5 years and 9 1/2 months experience as CC against the prescribed qualification of 6 years as detailed in the Board Note above."

At the same page, the court has also noted:

"Further resolved to take Thiru N.Chinnappan as CSC of the Company who is in the waiting list and who secured 2nd rank in the interview, on deputation from Vellore CSM on foreign service terms and conditions for one year initially and to consider for absorption after reviewing his performance in the post of CSC."

At page 185, it is noted "Resolved further to request the C&MD to inform the above facts to the High Court and expedite the disposal of the writ petition to enable the company to take Thiru N.Chinnappan on deputation.

It is also resolved to authorise the C.& M.D. to pursue further follow up action."

17. The Chairman and Managing Director has signed on the resolution on 11.11.1998 and also members have also signed on that. But there is only one member by name Shri.N.Narayanan I.A.S. Wanted to verify the experience of third respondent from Nayagarh unit. Why should be a concession or favouritism in favour of ineligible candidate?

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18. The resolution of the Board discloses that the Chairman and four other members have agreed for the resolution noted above. The file clarifies that Shri.I.V.Manivanann,I.A.S., Chairman & Managing Director of the Second respondent, Shri.Shashi Sekar, I.A.S., Commissioner of Small Savings, Dr.K.Arulmozhi, I.A.S.,Director of Agriculture, Smt.Anita Praveen I.A.S., Joint Commissioner of Sugar, N.Thangavelu, B.e., Chief Engineer (Buildings), Public works Department and T.A. Gajendran, Deputy Secretary to Government Industries Department have resolved to cancel the selection of third respondent and appoint the petitioner as CSC where as the only one member by name Shri.N.Narayanan, I.A.S., who is Chairman & Managing Director of Tamil Nadu Newsprint & papers Limited who is nothing to do with Sugar Mills wanted to have confirmation from Nayagarh Unit whether the third respondent worked in production and processing and on the basis of this, the third respondent is continuing in the post though the Board has taken specific resolution to cancel the appointment.

19. Further the Board also has passed resolution to inform these fact to the Court and get the writ petition disposed of early. Yet the third respondent continued in the post and his appointment is against the interim order.

20. Close reading of the file and other document are establishing clearly that the third respondent is not eligible to appear for written interview, therefore, securing more marks or less marks are immaterial. When the person do not possess the minimum eligibility, he should not be permitted to appear for the selection.

21. Therefore, this court is of the opinion that the third respondent did not possess the required experience, the selection of the third respondent is quashed and the second respondent is directed to appoint the petitioner forthwith as he is number 2 in the merit list and the Board of the second respondent has already taken decision to appoint the petitioner as mentioned above. The second respondent is also directed to issue necessary appointment order to the petitioner within one week from the date of receipt of a copy of this order relieving the third respondent.

22. The writ petition is allowed with cost of Rs.10,000/- (Rupees ten thousand only) to be payable by the third respondent to the petitioner.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   Industries Department
   Fort St. George, Chennai - 600 009.

2. The Chairperson and Managing Director
   Tamil Nadu Sugar Corporation
   474, Anna Salai, Nandanam
   Chennai - 600 035.

1 cc To Mr.S.T.S.Murthy, Advocate, SR.1197.
1 cc To Mr.P.Suseeladevi, Advocate, SR.1069.
1 cc To Mr.M.R.Raghavan, Advocate, SR.1639.

W.P.No.3837 of 1999

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